HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.158 OF 2008

JUDGMENT:

Appellant - accused filed this Criminal Appeal by invoking the provision under Section 374 (2) of the Criminal Procedure Code (in short 'Cr.P.C.') being aggrieved by the judgment, dated 31.01.2008 rendered in Sessions Case No.2 of 2007 by the Special Sessions Judge for SC/STs (POA) Act, Nalgonda, whereby and whereunder the learned Sessions Judge found the accused guilty of the offences punishable under Sections 417 and 376 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of five (5) years and to pay fine of Rs.500/- in default to undergo simple imprisonment for one month for the offence under Section 376 IPC and to undergo rigorous imprisonment for one year for the offence under Section 417 IPC. The learned trial Judge acquitted the accused for the offence punishable under Section
3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'the Act').

2. The brief facts of the case are as follows:

On 20-09-2003, the complainant-Bollaram Mahankali (PW-1) came to the Police Station, Yadagirigutta and lodged a complaint stating that she was resident of Datharpalli village and belongs to SC community, and the accused also resident of the same village and he belongs to Gowda community. PW.1 was running a kirana bunk in the village and the accused used to visit her kirana shop and developed sexual relationship with her since three years i.e., when she was aged 15 years, by inducing her with deceitful words that he would marry her and continued the amorous relationship with her till 20.09.2003. When she came to know that she became pregnant, PW.1 informed the accused about her pregnancy and forced him to marry her. But, the accused refused to marry her on the ground of her caste and asked her

to get the pregnancy aborted. Then, PW.1 informed the matter to her parents and her brother (PW-2). The parents of PW.1 approached the caste elders, who convened a panchayat in which the accused admitted his guilt but refused to marry her and told that he would pay twenty or thirty thousand rupees to PW.1, if she gets her pregnancy aborted. On the advise of the elders, PW.1 lodged a complaint in the Yadagirigutta Police Station against the accused.

Basing on the complaint made by PW.1, PW-6 Sub-Inspector of Police registered a case in Crime No.9 of 2003 under Sections 376 and 420 IPC and Section 3 (1) (xii) of the against the accused. PW.7 took up investigation of the matter and during the course of investigation, he went to village of PW.1 recorded her statement and sent her to Government Area Hospital, Bhongir and also for determination of age, referred her to Government Maternity Hospital, Nayapool, Hyderabad, where Dr.M. Jayasheela (PW-4), Professor of Obstetric and Gynaecology, examined her and gave medical report that she was carrying the pregnant of 24 weeks. On 24.09.2003, the accused surrendered before the Court. On requisition, he was sent to Gandhi Medical College, Secunderabad for potency test. After three months, PW.1 gave birth to a male child. Meanwhile, investigation of the case was given to PW.8. On his requisition, PW.1 and her male child were sent for DNA test to Forensic Science Laboratory, Hyderabad. On 03.06.2004, The Director of FSL gave report opining that the accused was the biological father of the male child of PW.1. After completion of investigation, police filed charge sheet.

3. On filing the charge sheet, learned Additional Judicial Magistrate of First Class, Bhongir took the case on file for the offences punishable under Sections 376 and 417 IPC and 3 (1) (xii) of the Act against the accused. As the offences are exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions. Thereafter, the same was made over to the trial Court for disposal in

accordance with law. On appearance of the accused, the charges made against him were read over and explained to him, for which, he pleaded not guilty and claimed for trial.

4. To substantiate its case, prosecution got examined P.Ws.1 to 9 and marked Exs.P-1 to P-14. On behalf of defence, no oral or documentary evidence was adduced.

5. After appreciating the oral and documentary evidence available on record, the trial Court found the accused guilty of the offences punishable under Sections 376 and 417 IPC, convicted and sentenced him as stated above. As the prosecution failed to prove the offence under Section 3 (i) (xii) of the Act, the trial Court acquitted the accused for the said offence. Aggrieved by the conviction order, the present appeal is filed by the appellant.

6. Heard and perused the entire material on record.

7. Learned counsel for the appellant – accused submitted that the trial Court erred in convicting the appellant basing on the evidence of PW.1 though there are contradictions in her evidence that with regard to the age of PW.1, there was no accurate evidence to show that she was a minor at the time of occurrence and the age certificate also discloses that the victim was aged about 19 years on the date of her examination, and hence, the conviction and sentence imposed by the trial Court are not sustainable.

8. Learned Public Prosecutor submitted that there are no grounds to interfere with the judgment under appeal and therefore, the appeal is liable to be dismissed.

9. In this case, the evidence of PW.1, who is victim, is most important to decide the issue. The case of the prosecution is that PW.1 was minor at the time of occurrence. It was recorded in the

deposition form of PW.1 before the trial Court that she was aged about 25 years. The evidence of doctor, who issued age certificate, also shows that PW.1 was aged about 19 years at the time of medical examination. According to PW.1, the accused had sexual intercourse with her three years prior to lodging of the complaint i.e. on 28.09.2003. To substantiate the same, there was nothing on record, except the fact that she was pregnant and was carrying a baby of 24 weeks old as on 28.09.2003. If the same is taken into account, the accused had sexual relationship with PW.1, when she was aged about 18 years. Hence, the fact that the appellant committed rape on PW.1, when she was a minor, is not sustainable. This Court is of the view that the prosecution failed to prove that the accused had sexual relationship with PW.1 when she was a minor and the consent given by her is not valid in law.

10. In view of the above, it can be said that being a major at the time of occurrence and knowing fully well the consequences of the sexual relationship with the accused, PW.1 gave consent to the said relationship and hence, the same would not attract the offence under Section 376 IPC. Hence, the conviction and sentence imposed by the trial Court against the appellant for the offence under Section 376 IPC is liable to be set aside and he is entitled for acquittal for the said offence.

11. As far as the offence under Section 417 IPC is concerned, it is the evidence of PW.1 that by saying deceitful words that he was in love with her and he would marry her, the accused had sexual relationship with her. But, after she became pregnant, the accused refused to marry her and asked her to get the pregnancy aborted. Then, PW.1 disclosed the matter to her parents and in the panchayat held by the caste elders, the accused admitted his guilt but, refused to marry her and offered some money to her to get the pregnancy aborted. The evidence of PW.1 is clinching in nature with regard to the

promise made by the accused to marry her and had sexual relationship with her. Hence, this Court is of the view that the conviction and sentence recorded by the trial Court against the accused for the offence under Section 417 IPC is sustainable in law and the same is confirmed.

12. At this time, learned counsel for the appellant – accused submitted that the appellant suffered a substantial period in jail, and prayed that a lenient view may be taken in imposing sentence.

13. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed by the Special Sessions Judge for SC/STs (POA) Act, Nalgonda vide judgment, dated 31.01.2008, in Sessions Case No.2 of 2007 against the appellant – accused for the offence under Section 376 IPC is set aside and the appellant – accused is acquitted for the offence under Section 376 IPC. Fine amount, if any paid by the accused shall be returned to him.

However, the conviction recorded for the offence under Section 417 IPC against the accused is confirmed and the sentence of imprisonment for the said offence is modified and reduced to the period already undergone by the accused since he had suffered a substantial period in jail.

Miscellaneous petitions, if any, shall stand closed. The fine amount, if any paid, shall be refunded to the appellant - accused.

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RAJA ELANGO, J

October 08, 2014.
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